



**DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING
ENFORCEMENT DIVISION
DIRECTIVE**

**DIRECTIVE NUMBER
228**

**DISTRIBUTION DATE
October 11, 2006**

1. **SUBJECT: COMPLAINTS WHEN ONE OR MORE OF THE ALLEGATIONS OR PARTIES ARE REJECTED FOR INVESTIGATION**
2. **PURPOSE:** To set forth the procedures for accepting formal complaints in those instances when the intake discussions disclose that one or more of the allegations are either non-jurisdictional or insufficient to accept a complaint for investigation.
3. **BACKGROUND:** The intake interview is the first stage of the investigative process. The Department of Fair Employment and Housing (DFEH) strives to provide uniform and quality service to the public in all district offices. It is important, therefore, to ensure that rejected complaints are handled in a uniform fashion. When it has been determined that a complaint is not jurisdictional or lacks merit on its face, but the complainant desires that a complaint be taken, the following procedures will apply.
4. **PROCEDURES:**
 - A. **Intake Standards:**
 - 1) The legal standards set forth in the Case Analysis Manual are applicable in every phase of complaint processing, including intake.
 - 2) In order for a complaint to be accepted, complainants are required to submit to the Department information to support their belief that illegal discrimination occurred.
 - 3) The complaint should be accepted for investigation if the information presented is such that the allegations, if proven, would constitute a violation of the Fair Employment and Housing Act (FEHA).
 - B. **Complaints Taken for Filing Purposes Only:**
 - 1) When all aspects of the complaint are rejected for investigation during intake:

When it is determined that there are jurisdictional, analytical or factual deficiencies in the complaint, the complainant will be advised of the reasons for not accepting the complaint for investigation and will be offered the option of filing a "Complaint Taken for Filing Purposes Only" (a "b" complaint).

NOTE: This process is not appropriate for Unruh or Ralph Act complaints.

- 2) When portions of the complaint are rejected for investigation during intake:
 - a) When it is determined that certain portions of the allegations or parties in the complaint do not meet the Department's standards, the consultant will so advise the complainant and give him/her the option of filing a "Complaint Taken for Filing Purposes Only" (a "b" complaint) on the rejected portions.
 - b) When the complainant desires to file a "Complaint Taken for Filing Purposes Only" for those portions of the complaint that were rejected for investigation, the consultant will follow the instructions set forth in Section 4.B.3), below.
- 3) When the complainant desires to file a "Complaint Taken for Filing Purposes Only," the consultant will:
 - a) Draft the Complaint of Discrimination (DFEH-300-04).
 - b) Complete the back of the Pre-Complaint Questionnaire (PCQ) (DFEH-600-03) and provide a summary of the complainant's allegations and the reasons for rejecting all or particular portions of the complaint for investigation. Such summary notes will be included on the back of the PCQ even if more lengthy intake notes are attached to it.
 - c) Complete the Employment Open EDP Report (DFEH-800-05E).
 - d) Obtain approval from the District Administrator, who will initial and date the front of the PCQ.
 - e) Have the complainant sign and date the complaint. The complainant will be given the notice "Discrimination Complaint Accepted for Filing Purposes" (DFEH-100-10). A copy will also be retained in the file.
 - f) Submit the entire package (PCQ, Complaint, Employment Open EDP Report and copy of DFEH-100-10) to the support staff, who will process the complaint in accordance with the

instructions in the Enforcement Division's Clerical Case Processing Manual.

- g) Close the case with Closing Category 40, "An Administrative Decision," regardless of the reason(s) for rejection.
- 4) When the complainant does not want to file a "Complaint Taken for Filing Purposes Only," the consultant will:
 - a) Complete the back of the PCQ and provide a summary of the complainant's allegations and the reasons for rejecting all or particular portions of the complaint for investigation. Such summary notes should be included on the back of the PCQ even if more lengthy intake notes are attached to it.
 - b) Make a notation on the back of the PCQ that the complainant was given the option of filing a "b" complaint on those portions of the complaint that were rejected for investigation.

C. Written Notice of Reasons for Rejection:

In instances when the complainant does not wish to file a "Complaint Taken for Filing Purposes Only" ("b" complaint), but, nonetheless, wishes to have the reasons for rejection for all or part of their allegations provided in writing, the consultant will:

- 1) Prepare a "Notice of Reasons for Rejection" (DFEH-100-11). This notice will set forth the respondent(s), basis(es) and allegation(s) not accepted for investigation.
- 2) Complete the back of the PCQ and provide a summary of the complainant's allegations and the reasons for rejecting all or particular portions of the complaint for investigation. Such summary notes will be included on the back of the PCQ. Additional sheets of paper may be attached as necessary.
- 3) Obtain approval from the District Administrator, who will initial and date the front of the PCQ.
- 4) Retain the notice with the PCQ.

D. Appeals to the District Administrator:

- 1) In those instances when the complainant does not wish to file a "b" complaint and wishes to appeal the consultant's decision not to accept a complaint for investigation, the complainant will be given a "Rejected Complaint Appeal Notice" (DFEH-100-06).

- 2) In instances when the charging party appeals to the District Administrator, either verbally or in writing, the District Administrator will re-evaluate the complaint to determine if the complaint is to be accepted for investigation.
- 3) When the District Administrator believes the intake standards have been met and decides to accept the complaint for investigation, he/she will:
 - a) Inform the consultant of the reasons for accepting the complaint.
 - b) Direct the consultant to complete the intake notes and prepare a complaint for signature.
 - c) Determine whether the case should be assigned to the original intake consultant or to another consultant.
- 4) When the District Administrator does not believe the complaint should be accepted for investigation, he/she will promptly inform the complainant of the reasons that the complaint is not being accepted. There may be instances when the District Administrator may be uncertain as to whether the complaint should be accepted or rejected due, in part, to complex issues, unusual jurisdictional concerns or other similar matters. In such instances, the District Administrator will contact the Regional Administrator and/or the assigned attorney for guidance. If, as a result of that consultation, the complaint is accepted, the procedures set forth above in Section 4.D.3) shall be followed. In all instances when a complaint is not accepted for investigation, the reasons will be noted on the back of the PCQ and a "Complaint for Filing Purposes Only" will again be offered to the complainant.
- 5) The District Administrator will advise the complainant in writing of the reasons the complaint was rejected, regardless of whether the appeal was verbal or in writing. A drafted "b" complaint (DFEH-300-04) will accompany the letter to the complainant.
- 6) When the complainant accepts the "Complaint for Filing Purposes Only" and signs the DFEH-300-04, the case will be handled in accordance with the procedures in Section 4.B.3), above.
- 7) In instances when the complainant does not wish to file a "Complaint Taken for Filing Purposes Only" ("b" complaint), but, nonetheless, wishes to have the reasons for rejection for all or part of their allegations substantiated in writing, the District Administrator will prepare a "Notice of Reasons for Rejection" for the complainant. A copy of this will be retained with the PCQ.

5. **APPROVAL:**

Suzanne M. Ambrose, Director

Date